

TCG

July 10, 1998

Ms. Kathy Brown
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street Northwest
Room 500
Washington, D.C. 20554

Dear Kathy:

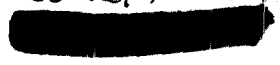
Thank you for the opportunity to introduce you to Bob Annunziata. We both enjoyed our chat greatly.

Per your request, I attach the pertinent language in state regulatory decisions determining that reciprocal compensation does apply to ISP-destined traffic. To date, parties taking the position TCG takes have not lost a single case in the states. It is important that the FCC not upset this apple cart, because the rulings produce the right answer to the question: Will relationships between local exchange carriers be effectively governed by contract, as the Telecommunications Act envisions?

I look forward to working with you to make the answer to this question, "Yes."

Sincerely,

Gail

U. 10/10/98

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Rulings Related to Applicability of Reciprocal Compensation to ISP Providers

1. Illinois Commerce Commission, Teleport Communications Group, Inc. v. Illinois Bell Telephone Company, Ameritech Illinois Complaint as to Dispute over Contract Definition, Opinion and Order, Ill. CC Docket No. 97-0404 (Mar. 11, 1998)

“The agreements unambiguously provide that reciprocal compensation is applicable to local traffic billable to Ameritech. Since Ameritech Illinois currently charges end users local service charges when completing calls that terminate at the complainants’ ISP customers, the plain reading of the interconnection agreements inevitably leads to the conclusion that reciprocal compensation charges should apply to those calls. The interconnection agreements do not distinguish between end users ” (Page 11)

“For more than a year Ameritech Illinois paid reciprocal compensation treating calls to ISPs as local traffic.” (Page 14)

“Indeed, Ameritech Michigan Illinois’ unilateral ‘remedy’ [non-payment] is so ill-tailored to its perceived problem that it lends substantial credence to the complainants’ allegations that Ameritech Illinois’ conduct is intentionally anticompetitive.” (Page 14)

2. New York Public Service Commission, Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic, Order Closing Proceeding, NY PSC Case No. 97-C-1275 (Mar. 19, 1998)

“A call to an ISP is no different from a call to any other large volume customer, such as a local bank or a radio call-in program. These calls are all local calls. They are billed at local rates and are treated as local calls for ARMIS Reporting and Separations. The fact that the call may sometimes be handed off and routed within the ISP’s computer network(s) or through the Internet backbone does not alter the jurisdictional nature of the call from the end user to the ISP.”

3. Michigan Public Service Commission, Application for Approval of an Interconnection Agreement Between Brooks Fiber Communications of Michigan, Inc. and Ameritech Information Industry Services on Behalf of Ameritech Michigan, Opinion and Order, Mich. PSC Case Nos. U-11178, U-111502, U-111522, U-111553 and U-111554 (Jan. 28, 1998)

“During the negotiation of its interconnection agreement, Brooks indicated its view that calls to ISPs were local and, as such, subject to reciprocal compensation. 3 Tr. 260-263. In addition, when implementing the interconnection agreements (and before those agreements, its interconnection tariff), Ameritech Michigan billed reciprocal compensation charges to other providers for calls terminated to ISPs that were customers of Ameritech Michigan and paid reciprocal compensation to other providers for calls terminated to ISPs

on their own networks ” (Page 9)

“Similarly, it is more reasonable to conclude that Ameritech Michigan did not cease paying reciprocal compensation for the disputed calls to correct a past ‘mistake’ or to return to the clear meaning of the agreements, but rather to implement a policy change that it found advantageous. It is reasonable to conclude that Ameritech Michigan changed its interpretation of the agreements only when another Bell operating company raised the issue in its service territory and Ameritech Michigan realized that the balance of payments was against it ” (Page 10)

“Ameritech Michigan treats calls to ISPs at local telephone numbers as local calls for the purpose of imposing local charges under its tariffs . . . Ameritech Michigan treats the calls as local calls for the purpose of rating, billing, reporting, and separations allocations between interstate and intrastate jurisdictions ” (Page 11)

4. Connecticut Department of Public Utility Control, Petition of the Southern New England Telephone Company for a Declaratory Ruling Concerning Internet Service Provider Traffic, Final Decision, Conn. DPUC Docket No. 97-05-22 (Sept. 17, 1997)

“[SNET] appears to be attempting to dictate the terms and conditions under which mutual compensation would apply beyond those provided for in the January 17, 1996 Decision in Docket No. 94-10-02 ” (Page 9)

“Subscription of local voice grade connection to the PSN by ISPs, as well as its use of these connections, is no different than those subscribed to and utilized by other SNET business and residential customers. The Department finds that any traffic originating and terminating in the local calling area carried over these connections should be subject to compensation as outlined in the Plan. Not applying the Plan’s mutual compensation arrangements to this traffic would discriminate against these users and violate the 1996 Telecom Act and Conn. Gen. Stat. §16-247a. The fact that the Plan requires that compensation be paid for all local traffic carried over the LEC and the CLEC networks does not, and should not, depend on the usage characteristics of a specific end user. Therefore, ISP traffic should be subject to mutual compensation.” (Pages 9-10)

5. Texas Public Utility Commission, Complaint and Request for Expedited ruling of Time Warner Communications, Order, Tex. PUC Docket No. 18082 (Feb. 27, 1998), aff’d Southwestern Bell Telephone Company v. Public Utility Commission of Texas, MO-98-CA-43 (W.D. Tex. June 22, 1998).

Quotes from the Court decision affirming the Texas PUC’s decision:

“[A] contract is not ambiguous if it can be given a definite or certain meaning as a matter of law. . . . [T]he failure to include more express language of the parties’ intent does not

create an ambiguity when only one reasonable interpretation exists.” (Page 25)(cites omitted).

“Based on a reasonable interpretation of the interconnection agreements, the PUC appropriately found that the agreements were not ambiguous and that the ‘definition of ‘local traffic’ in the applicable agreements include ISP traffic that otherwise conforms to the definition.” (Page 26)

“[A]lthough Southwestern Bell contends that, prior to the Second Agreement’s enactment, it had communicated to Time Warner its misgivings about the application of reciprocal compensation fees for ISP calls, the parties still failed to specifically exclude ISP calls from the definition of local traffic ” (Page 26)

6. Pennsylvania Public Utility Commission, Petition for Declaratory Order of TCG Delaware Valley, Inc. for Clarification of Section 5.7.2 of its Interconnection Agreement with Bell Atlantic-Pennsylvania, Inc., P-00971256 (June 2, 1998)

“The general rule is that in the absence of fraud, accident or mistake, the law declares the writing to be not only the best, but the only evidence of the agreement between the parties. [Cites omitted] . . . Based on the [application] of contract principles to this controversy, we agree with TCG that according to the plain and ordinary meaning of the words, the traffic from end-users to ISPs is local and subject to reciprocal compensation arrangements.” (Pages 21-22)

7. Oklahoma Corporation Commission, Application of Brooks Fiber Communications of Oklahoma, Inc., and Brooks Fiber Communications of Tulsa, Inc. for an Order Concerning Traffic Terminating to Internet Service Providers and Enforcing Compensation Provisions of the Interconnection Agreement with Southwestern Bell Telephone Company, Okla. CC Case No. PUD 970000548 (Jun. 3, 1998)

“The Commission finds that the pertinent terms of the Interconnection Agreement are clear and unambiguous . . . ” (Page 6)

“Where the calling party and the called party (the ISP) are located in the same calling area, the traffic is local traffic under the express terms of the interconnection agreement.” (Page 8)

8. Wisconsin Public Service Commission, Contractual Disputes About the Terms of an Interconnection Agreement Between Ameritech Wisconsin and TCG Milwaukee, Inc., 5837-TC-100 (May 13, 1998)

“[T]he Commission found that calls to an internet service provider are local traffic -- not switched exchange access traffic -- under the agreement and subject to reciprocal compensation provisions of that agreement.” (Page 1)

9. North Carolina Utilities Commission, Interconnection Agreement between BellSouth Telecommunications, Inc. and US LEC of North Carolina, Inc., Order Concerning Reciprocal Compensation for ISP traffic, NC UC Docket No. P-55, SUB 1027 (Feb. 26, 1998)

“The Interconnection Agreement speaks of reciprocal compensation for local traffic. There is no exception for local traffic to an end user who happens to be an ISP.” (Page 6)

“BellSouth treats calls from its own end-user customers to ISPs it serves with telephone numbers in the same local calling areas as local traffic. BellSouth charges its own ISP customers local business line rates for local telephone exchange service. When a BellSouth telephone exchange service customer places a call to an ISP within the caller’s local calling area, BellSouth also treats the revenue associated with the local exchange traffic to its ISP customers as local for the purposes of separations and ARMIS reporting.” (Page 6)

10. Virginia State Corporation Commission, Petition of Cox Virginia Telecom, Inc. for Enforcement of Interconnection Agreement with Bell Atlantic Virginia, Inc. and Arbitration Award for Reciprocal Compensation for the Termination of Local Calls to Internet Service Providers, Final Order, Va. SCC Case No. PUC970069 (Oct. 24, 1997)

“Having considered the response of BA-VA [Bell Atlantic] and the replies, the Commission finds that calls to ISPs as described in the Cox petition constitute local traffic under the terms of the agreement between Cox and BA-VA and that the companies are entitled to reciprocal compensation for the termination of this type of call.” (Page 2)

“Calls that are placed to a local ISP are dialed by using the traditional local-service, seven-digit dialing sequence. Local service provides the termination of such calls at the ISP, and any transmission beyond that point presents a new consideration of services involved.” (Page 2)

11. **Maryland Public Service Commission, Letter from Daniel P. Gahagan, Executive Secretary, to David K. Hall, Esq., Bell Atlantic - Maryland, Inc., Md. PSC Letter (Sept. 11, 1997)**

“The Commission is of the opinion that the primary issues presented is resolvable pursuant to the terms of the BA-MD/MFS Interconnection Agreement. Further, the Commission finds that MFS is entitled to compensation for termination of the telephone calls in question.” (Page 1)

12. **Colorado Public Utilities Commission, Petition of MFS Communications Company, Inc. for Arbitration Pursuant to 47 U.S.C. §252(b) of Interconnection Rates, Terms, and Condition with U.S. West Communications Inc., Decision Regarding Petition for Arbitration, Decision No. C96-1185 Co. PUC Docket No. 96A-287T (Nov. 5, 1996)**

“We agree with the MFS and Staff position, that the Agreement should apply compensation charges to all types of traffic and exceptions shall not be created for enhanced service traffic ” (Page 30)

13. **West Virginia Public Service Commission, MCI Telecommunications Corporation Petition for Arbitration of Unresolved Issues for Interconnection Negotiations Between MCI and Bell Atlantic - West Virginia, Inc., Order, WV PSC Case No. 97-1210-T-PC (Jan. 13, 1998)**

“[I]t is clear that, historically, calls that originate and are terminated to ISPs in local calling areas are treated as local traffic . . . ” (Page 29)

14. **Arizona Corporation Commission, Petition of MFS Communications Company, Inc. For Arbitration of Interconnection Rates, Terms, and Conditions with U.S. West Communications Inc., Pursuant to 17 U.S.C. § 252(b) of the Telecommunications Act of 1996, Opinion and Order, Decision No. 59872, Ariz. CC Docket Nos. U-2752-96-362 (Oct. 29, 1996).**

“In rejecting US West’s request to amend the interconnection agreement to exempt ISP traffic from reciprocal compensation, the ACC states: “The [Arizona Corporation Commission] also must decide the issue solely based upon the positions taken in the agreement.” (Page 7)

15. **Oregon Public Utility Commission, Petition of MFS Communications Company, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. §252(b) of the Telecommunications Act of 1996, Decision, Or. PUC Order No. 96-324 (Dec. 9, 1996)**

“I adopt the MFS proposed language in Joint Position Statement, at 12. There is no

reason to depart from existing law . . . ” (Page 16)

16. Washington Utilities and Transportation Commission, Petition for Arbitration of an Interconnection Agreement Between MFS Communications Company, Inc. and U.S. West Communications Inc. Pursuant to 47 U.S.C. §252, Arbitrator’s Report and Decision, Wash. UTC Docket No. UT-960326 (Nov. 8, 1996), *aff’d* U.S. West Communications, Inc. v. MFS Intelnet, Inc., No. C97-22WD (W.D. Wash. Jan. 7, 1998)

The reports states simply, “The arbitrator adopts the MFS position.” (Page 26)

Other State Regulatory Agency Decisions Expressing Similar Views:

1. Minnesota Department of Public Service, Consolidated Petitions of AT&T Communications of the Midwest, Inc., MCIMetro Access Transmission Service, Inc., and MFS Communications Company for Arbitration with U.S. West Communications, Inc. Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996, Order Resolving Arbitration Issues, Minn. DPS Docket Nos. P-442, 421/M-96-855, P-5321, 421/M-96-908, P-8167, 421/M-96-729 (Dec. 2, 1996)
2. Missouri Public Service Commission, Petition of Birch Telecom of Missouri Inc. for Arbitration of the Rates, Terms, Conditions and Related Arrangements for Interconnection with SWBT, Case No TC-96-275 (April 23, 1998)
3. Tennessee Regulatory Authority, Petition of Brooks Fiber to Enforce Interconnection Agreement and for Emergency Relief, Tenn. R.A. Docket No. 98-00118 (Apr. 21, 1998)